

AO 242 (12/11) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

UNITED STATES DISTRICT COURT

for the
Western District of Texas

FILED

AUG 21 2015

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY  DEPUTY

Clivian Melissa Contreras-Casco,

Petitioner

v.

Enrique Lucero, et al.,

Respondent

(name of warden or authorized person having custody of petitioner)

SA15CA0716 XR

Case No.

(Supplied by Clerk of Court)

PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

Personal Information

1. (a) Your full name: Clivian Melissa Contreras-Casco
- (b) Other names you have used: _____
2. Place of confinement:
 - (a) Name of institution: South Texas Family Residential Center
 - (b) Address: 1925 West Highway 85
Dilley, Texas 78017
 - (c) Your identification number: A 202-138-499
3. Are you currently being held on orders by:

☒ Federal authorities ☐ State authorities ☐ Other - explain: _____
4. Are you currently:

☐ A pretrial detainee (waiting for trial on criminal charges)

☐ Serving a sentence (incarceration, parole, probation, etc.) after having been convicted of a crime

If you are currently serving a sentence, provide:

 - (a) Name and location of court that sentenced you: _____
 - (b) Docket number of criminal case: _____
 - (c) Date of sentencing: _____

☒ Being held on an immigration charge

☐ Other (explain): _____

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Decision or Action You Are Challenging

5. What are you challenging in this petition:

- ☐ How your sentence is being carried out, calculated, or credited by prison or parole authorities (for example, revocation or calculation of good time credits)
- ☐ Pretrial detention
- ☒ Immigration detention
- ☐ Detainer
- ☐ The validity of your conviction or sentence as imposed (for example, sentence beyond the statutory maximum or improperly calculated under the sentencing guidelines)
- ☐ Disciplinary proceedings
- ☐ Other (explain): _____

6. Provide more information about the decision or action you are challenging:

- (a) Name and location of the agency or court: U.S. Immigration and Customs Enforcement (ICE) San Antonio Field Office, 1777 NE Loop 410, Floor 15 San Antonio, TX 78217
- (b) Docket number, case number, or opinion number: A 202 138 499
- (c) Decision or action you are challenging (for disciplinary proceedings, specify the penalties imposed):
(1) Denial of a bond hearing pursuant to INA 236(a) based on misclassification as a person with an administratively final order of removal; (2) prolonged detention without a bond hearing in violation of the Due Process Clause; (3) detention not reasonably related to a legitimate government purpose, violating due process
- (d) Date of the decision or action: 12/28/2014

Your Earlier Challenges of the Decision or Action7. **First appeal**

Did you appeal the decision, file a grievance, or seek an administrative remedy?

- ☐ Yes ☒ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: _____

(2) Date of filing: _____

(3) Docket number, case number, or opinion number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

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(b) If you answered "No," explain why you did not appeal: With respect to ground (1) there is no non-futile means to appeal the agency's misclassification, based on the agency's published decision in Matter of A-W-; With respect to grounds (2) and (3), there is no administrative remedy or appeal available.

8. **Second appeal**

After the first appeal, did you file a second appeal to a higher authority, agency, or court?

☐ Yes ☐ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: _____

(2) Date of filing: _____

(3) Docket number, case number, or opinion number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

(b) If you answered "No," explain why you did not file a second appeal: _____

9. **Third appeal**

After the second appeal, did you file a third appeal to a higher authority, agency, or court?

☐ Yes ☐ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: _____

(2) Date of filing: _____

(3) Docket number, case number, or opinion number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

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(b) If you answered "No," explain why you did not file a third appeal:

10. **Motion under 28 U.S.C. § 2255**

In this petition, are you challenging the validity of your conviction or sentence as imposed?

☐ Yes ☒ No

If "Yes," answer the following:

(a) Have you already filed a motion under 28 U.S.C. § 2255 that challenged this conviction or sentence?

☐ Yes ☐ No

If "Yes," provide:

(1) Name of court: _____

(2) Case number: _____

(3) Date of filing: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

(b) Have you ever filed a motion in a United States Court of Appeals under 28 U.S.C. § 2244(b)(3)(A), seeking permission to file a second or successive Section 2255 motion to challenge this conviction or sentence?

☐ Yes ☐ No

If "Yes," provide:

(1) Name of court: _____

(2) Case number: _____

(3) Date of filing: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

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- (c) Explain why the remedy under 28 U.S.C. § 2255 is inadequate or ineffective to challenge your conviction or sentence: _____
- _____
- _____
- _____
- _____
- _____

11. Appeals of immigration proceedings

Does this case concern immigration proceedings?

☒ Yes ☐ No

If "Yes," provide:

- (a) Date you were taken into immigration custody: 12/27/2014
- (b) Date of the removal or reinstatement order: 12/28/2014
- (c) Did you file an appeal with the Board of Immigration Appeals?

☒ Yes ☐ No

If "Yes," provide:

- (1) Date of filing: 05/21/2015
- (2) Case number: A-202-138-499
- (3) Result: Pending, fully briefed
- (4) Date of result: _____
- (5) Issues raised: (1) the Immigration Judge's clearly erroneous credibility assessment; (2) the IJ's failure to take administrative notice of facts known to U.S. authorities which establish the essential elements of Petitioner's claims for relief; (3) the IJ's improper pretermission of Petitioner's asylum application.
- _____
- _____

- (d) Did you appeal the decision to the United States Court of Appeals?

☐ Yes ☒ No

If "Yes," provide:

- (1) Name of court: _____
- (2) Date of filing: _____
- (3) Case number: _____

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(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

12. Other appeals

Other than the appeals you listed above, have you filed any other petition, application, or motion about the issues raised in this petition?

☐ Yes☒ No

If "Yes," provide:

(a) Kind of petition, motion, or application: _____

(b) Name of the authority, agency, or court: _____

(c) Date of filing: _____

(d) Docket number, case number, or opinion number: _____

(e) Result: _____

(f) Date of result: _____

(g) Issues raised: _____

Grounds for Your Challenge in This Petition

13. State every ground (reason) that supports your claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: Petitioner is eligible for a bond hearing before an immigration judge because she is not the subject of an administratively final order of removal. Respondents' denial of a bond hearing violates Section 236 of the Immigration and Nationality Act, as well as her rights under the Fifth Amendment's Due Process Clause. See Memorandum in Support of Motion for Expedited Order to Show Cause Pursuant to 28 USC 2243, attached

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(a) Supporting facts *(Be brief. Do not cite cases or law.):*

On December 28, 2014, DHS reinstated a prior order of removal against Petitioner. On January 16, 2015, she passed a reasonable fear interview with an asylum officer, and consequently, was referred to an Immigration Judge. On April 21, 2015, the Immigration Judge denied Ms. Contreras's claims after she presented them pro se. On May 21, 2015, Petitioner, through new pro bono counsel, appealed the IJ's decision to the Board of Immigration Appeals. Her appeal remains pending before the Board of Immigration Appeals, so she is not the subject of an administratively final order of removal.

(b) Did you present Ground One in all appeals that were available to you?

☐ Yes☐ No

GROUND TWO: Petitioner's nearly eight month no-bond detention with her 8 year-old daughter has become unreasonably prolonged in violation of her right to due process. See Memo Supp. Mtn for Expedited Order to Show Cause, attached.

(a) Supporting facts *(Be brief. Do not cite cases or law.):*

DHS detained Petitioner and her then-seven year-old daughter on December 27, 2015. On January 16, 2015, she passed a reasonable fear interview with an asylum officer. At no point in their custody have Petitioner or her daughter been afforded a bond hearing. Petitioner is not the subject of an administratively final order of removal because her appeal remains pending before the BIA.

(b) Did you present Ground Two in all appeals that were available to you?

☐ Yes☐ No

GROUND THREE: Because there is significant evidence suggesting DHS's detention of Petitioner rests on a constitutionally invalid government purpose, continued detention without a constitutionally adequate bond hearing violates her right to due process. See Memo Supp. Mtn for Expedited Order to Show Cause, attached.

(a) Supporting facts *(Be brief. Do not cite cases or law.):*

When the government detained Petitioner and her daughter in December 2014, that detention was pursuant to a policy--since rejected by a federal court and abandoned by the government--of detaining Central American women and their children in order to deter future migration from that region. Since December, the government announced a policy of releasing women and children after they passed their reasonable fear interviews, a step Petitioner has completed. Yet Petitioner remains detained. On August 6, 2015, despite its position that it does not use deterrence in individual custody determinations, the government admitted to the U.S. District Court for the Central District of California that its justification for refusing to release those in family detention is deterrence.

(b) Did you present Ground Three in all appeals that were available to you?

☐ Yes☐ No

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GROUND FOUR:

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

(b) Did you present Ground Four in all appeals that were available to you?

☐ Yes

☐ No

14. If there are any grounds that you did not present in all appeals that were available to you, explain why you did not: As stated above, no appeals of the governments deprivations listed in Grounds 1-3 above are available.

Request for Relief

15. State exactly what you want the court to do: (1) Grant Petitioner's Motion for an Expedited Order to Show Cause requiring Respondents to respond within ten (10) days why this Petition should not be granted; (2) Set an expedited hearing within a reasonable time after Respondents submit their Response to the Show Cause Order; (3) Grant the Petition for Writ of Habeas Corpus, and order Respondents to afford Petitioner a bond hearing within 10 days of the Court's Order (4) Order that the government must bear the burden of proof in the bond hearing.

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Declaration Under Penalty Of Perjury

If you are incarcerated, on what date did you place this petition in the prison mail system:

I declare under penalty of perjury that I am the petitioner, I have read this petition or had it read to me, and the information in this petition is true and correct. I understand that a false statement of a material fact may serve as the basis for prosecution for perjury.

Date:

8/20/2015

Glenn Melissa Contreras Casco
Signature of Petitioner

R. John [Signature]

Signature of Attorney or other authorized person, if any